Appl. No: 09/835,507
Amdt. Dated September 10, 2004
Reply to Office Action of June 15, 2004

REMARKS/ARGUMENTS

Prior to this Amendment, claims 1-27 were pending in the application.

Claim 1 is amended to call for determining an intermediate distribution device that is affected by a failed distribution attempt and then "operating the affected intermediate distribution device to build new distribution commands for the failed distribution job from the retrieved distribution parameters." The method of claim 1 also calls for "initiating and performing a redistribution of a set of software packages from the affected intermediate distribution device based on the new distribution commands. No new matter is added by this amendment with support found at least in Figure 2 and the corresponding portions of the specification. Dependent claim 4 is amended to correct a typographical error.

Independent claim 18 is amended to include the limitations of originally filed claim 20, and claim 20 is canceled. Claim 21 is amended to correct dependency. No new matter is added with support being found at least in the originally filed claims.

Claims 1-19 and 21-27 remain for consideration by the Examiner.

Rejections under 35 U.S.C. §101

In the June 15, 2004 Office Action, claims 18, 19, and 22-27 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as copending Application No. 09/779,147 (i.e., US 2003/0110248 A1). To provide a clear line of demarcation between the two pending applications, claim 18 is amended to include the limitations of dependent claim 20 (which was not subject to the 101 rejection). As amended, claim 18 is not in conflict with claim 1 of Application No. 09/779,147 as it was published as US 2003/0110248 A1.

Claims 19 and 22-27 depend from claim 18, and the amendment to claim 18 addresses the rejections under 101 of these claims.

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Rejections under 35 U.S.C. §103

Further, in the Office Action, claims 1-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's admitted prior art ("AAPA") provided in the Background on pages 3-5 of Applicant's application. The rejection of pending claims 1-19 and 21-27 is respectfully traversed based on the amendments to claims 1 and 18 and the following remarks.

The Office Action argues that each step of claim 1 is taught as being performed manually by the AAPA, and hence, the method of claim 1 is obvious since it is merely the automation of a known manual process. Applicant disagrees with the Office Action's reading of the AAPA. Applicant believes that at least the operating and building steps of claim 1 are not shown in the AAPA, and therefore, even if the manual techniques discussed in the AAPA were automated, Applicant's invention is not shown or even suggested.

Claim 1 is directed to a method for redistributing software that calls for determining an intermediate distribution device that is affected by a failed distribution attempt. A distribution job that failed at the intermediate distribution device is identified and distribution parameters are retrieved from the affected intermediate distribution device. Significantly, the method continues with "operating the affected intermediate distribution device to build new distribution commands for the failed distribution job from the retrieved distribution parameters." The AAPA fails to teach operating an intermediate distribution device to build new distribution commands.

Further, claim 1 calls for "initiating and performing a redistribution of a set of software packages from the affected intermediate distribution device based on the new distribution commands." The AAPA fails to teach or suggest performing a redistribution "from the affected intermediate distribution device" and certainly, does not teach "initiating" such a redistribution from an affected intermediate distribution device. Hence, mere automation of the methods discussed in the AAPA would not result in the claimed invention.

Because each element is not shown or suggested by the AAPA, the AAPA does not support a rejection of claim 1, and this rejection should be withdrawn.

More particularly, the Office Action cites the AAPA at paragraphs [0004-11] for teaching building new distribution commands and for performing the redistribution. However, the AAPA teaches at [0008] that "a master server" executes a distribution tool to distribute an application package over the network through intermediate distribution servers. At [0011], the AAPA describes attempting to manually determine failed distributions by accessing both the master device and logfiles in the intermediate distribution server. Restaging or redistribution is then performed by operating the distribution tool at the master server. There is no teaching building new distribution commands with the intermediate distribution server. Instead such commands apparently are generated manually according to the AAPA and then built or carried out at the master server. Because the operating of the intermediate distribution server step is not shown or suggested by the AAPA, claim 1 is not obvious in light of its teaching.

Further, the AAPA provides no teaching that an intermediate distribution server can or should be configured to initiate and perform a redistribution as called for in claim 1. As discussed above, the AAPA teaches that the master server is operated to initiate a redistribution and that a redistribution is performed from the master server. There is no teaching or suggestion that such functions can be or should be transferred to intermediate distribution servers that are affected by a failed distribution. Hence, the AAPA cannot support a rejection of claim 1 under 103(a) because it fails to teach or suggest each element of claim 1 (whether such element is performed manually or not).

Claims 2-9 depend from claim 1 and are believed allowable at least for the reasons for allowing claim 1. Further, claim 4 calls for a redistribution tool to be run on the affected intermediate distribution device and to perform the

identifying of the failed distribution job, the retrieving of the distribution parameters, and the building of the new distribution commands. The AAPA fails to teach the use of a single tool to perform such tasks and clearly fails to teach that such a tool is run on the intermediate distribution device. Instead, the AAPA teaches that a distribution tool is run on the master server. Further, this tool does not perform any of the 3 functions called for in claim 4. Claim 6 further calls for a distribution manager to be run on the intermediate distribution device to perform the redistribution from the intermediate distribution device. Again, the AAPA teaches that such distribution is performed from a master server. For these additional reasons, claims 4 and 6 are allowable over the AAPA.

Claim 10 is directed to a computer system for distributing software. The reasons provided for allowing claim 1 over the AAPA are believed applicable to claim 10 and are incorporated herein. Specifically, the system includes a redistribution tool that operates to issue "distribution commands to a distribution manager running on the affected intermediate distribution server to cause initiation of a redistribution job." The AAPA teaches that redistribution is affected and controlled by a master server. The Office Action argues that the AAPA teaches all of the features of claim 10. However, the AAPA does not teach or suggest that a distribution manager is run on the AAPA intermediate distribution servers or that such a distribution manager is operated in response to redistribution commands to initiate a redistribution for the affected intermediate distribution server. Hence, the AAPA does not support a rejection of claim 10 under 103(a).

Claims 11-14 depend from claim 10 and are believed allowable as depending from an allowable base claim. Further, claim 14 calls for the redistribution tool to be "called from the affected intermediate distribution server to execute on the affected intermediate distribution server." The Office Action provides no specific citation in the AAPA for teaching an intermediate distribution server that is configured to call a redistribution tool, such as when

it is affected by a distribution failure. Hence, claim 14 calls for a system that operates in a different manner to accomplish a redistribution than the AAPA. Hence, again, even if the AAPA methods were fully automated it would operate in a significantly different manner than the system of claim 14. For this additional reason, claim 14 is allowable over the AAPA.

Independent claim 15 is directed to a method for software distribution that includes processing error alerts and issuing job tickets. Further, claim 15 calls for "running a redistribution tool on the affected intermediate server to automatically generate a set of redistribution commands." As discussed with reference to claims 1 and 4, the AAPA fails to teach running a redistribution tool on an affected intermediate server (only teaches a distribution tool which functions differently than the claimed redistribution tool being run on the master server). The AAPA also does not teach the building of a set of redistribution commands at the affected intermediate server. Claim 15, as with claim 1, calls for performing a redistribution "from the affected intermediate server based on the redistribution commands." The AAPA does not teach or suggest redistributing from an affected server but instead teaches redistribution being initiated and performed a centralized master server. Hence, claim 15 is not taught or suggested by the AAPA, and claim 15 and claims 16 and 17, which depend from claim 15, are believed in condition for allowance.

Independent claim 18 is directed to a method for creating job tickets and redistributing software that is not shown in the AAPA. The method of claim 18 includes running a redistribution tool on a network device that failed and performing a redistribution from the failed network device. As discussed with reference to claim 1, these elements of the method of claim 18 are not shown or suggested by the AAPA. For at least this reason, claim 18 and claims 19 and 21-27, which depend from claim 18, are allowable over the AAPA.

Further, the Office Action rejected claim 18 and dependent claims 19 and 22-27 without providing any citations to the AAPA or any other references but merely on the bald statement that all of the limitations in these claims would have been obvious to one skilled in the art. To the extent that the Examiner is taking Official Notice, Applicant traverses such notice with regard to claims 18, 19, and 22-27. Claims 18, 19, and 22-27 are believed to include a number of features not shown or obvious based on the AAPA or the knowledge of one skilled in the arts.

The method of claim 18 calls for "processing an error alert to identify a failure type from the failure information" in the error alert. AAPA fails to teach such processing. Further, claim 18 calls for comparing an updated tracking value for an identified failure type to a threshold limit and if the threshold is exceeded, creating a job ticket. The Office Action merely states this would be obvious with no support. The only reference, i.e., the AAPA, provides no teaching of tracking of the number of times a fault is identified and comparing this tracked number with a threshold. Further, claim 18 requires that the threshold limit be specific to the identified failure type. Applicants disagree that this feature is obvious "based upon information gained by the service desk in historic operations." Hence, the rejection of claim 18 is not supported by the AAPA, and Applicant disagrees that these limitations can be shown by the taking of Official Notice without support in a specific reference.

Further, claim 19 calls for differing threshold limits and the Office Action fails to provide a reference that teaches differing any threshold limits for failure types. Claim 22 calls for checking an outage list prior to generating a job ticket, and the Examiner indicates it would be obvious not to issue a job ticket for a machine on an outage list. However, existing systems typically issue numerous error alerts which are used to generate numerous job tickets for the same machine (see, Applicant's specification at the top of page 16) and even for "out" machines. Claim 24 calls for the thresholds to be selected

for each device, and a rejection under 103(a) is not shown by a statement that this would be obvious by the Examiner without some support. For these additional reasons, claims 19, 22, and 24 are allowable over the AAPA and are not obvious in light of the knowledge of those skilled in the art at the time of the invention.
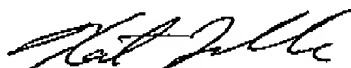
Conclusions

The references made of record but not relied upon have been considered, and the pending claims are believed allowable over these references considered alone or in any combination.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested.

No fee is believed due with this Amendment, but any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

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